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Permanent Forum on Indigenous Issues
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Ongoing priorities and themes: human rights, with special emphasis on interactive dialogue with the Special Rapporteur of the Commission on Human Rights on the situation of human rights and fundamental freedoms of indigenous people

Information received from the United Nations system

Office of the United Nations High Commissioner for Human Rights

Summary

The present report responds to the recommendations made by the Permanent Forum on Indigenous Issues at its fourth session that were addressed directly to the Office of the United Nations High Commissioner for Human Rights (OHCHR). It also makes reference to activities undertaken by OHCHR that are of relevance to the Forum. OHCHR draws attention in particular to the report of the High Commissioner for Human Rights presented to the Commission on Human Rights at its sixty-second session, which reflects all activities that were undertaken in 2005 under the aegis of OHCHR to promote and protect the rights of indigenous peoples (E/CN.4/2006/77).

The recommendations and conclusions of the expert seminar on indigenous peoples' permanent sovereignty over natural resources and their relationship to land, which was held in Geneva in January 2006, are contained in the annex.

* E/C.19/2006/1.

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I. Introduction

1. The present report responds to the recommendations made by the Permanent Forum on Indigenous Issues at its fourth session that were addressed directly to the Office of the United Nations High Commissioner for Human Rights (OHCHR).

2. In paragraphs 37 and 65 of its report on its fourth session,[1] the Forum recommended that the United Nations Human Settlements Programme, jointly with OHCHR, organize an expert meeting in 2006 to review the process of realization of indigenous peoples' housing rights globally and identify and document best practices.

3. In paragraph 62 of its report, the Forum also recommended that United Nations bodies and mechanisms and OHCHR strengthen the machinery to address the urgent, gross and ongoing human rights violations, militarization of indigenous lands and systemic violence committed by Member States against indigenous peoples.

4. In paragraph 38 of its report, the Forum also called for the dissemination and full implementation of the recommendations on the relationships of indigenous peoples and land rights, and on permanent sovereignty of indigenous peoples over their natural resources contained in the reports of the Special Rapporteur of the Commission on Human Rights on the situation of human rights and fundamental freedoms of indigenous people.

5. Paragraph 73 recommends that the Special Rapporteur pay special attention to the situation of uncontacted indigenous peoples, peoples in voluntary isolation, peoples in isolated and remote localities and displaced people.

6. In addition, paragraph 54 of the Forum's report recommends that the Special Rapporteur promote and monitor the realization of indigenous peoples' rights to quality and culturally appropriate education, including treaty rights to education.

II. Adequate housing

7. The Committee on Economic, Social and Cultural Rights recognized in its general comment on the right to adequate housing adopted in 1997 that indigenous peoples suffer disproportionately from the practice of forced eviction, often carried out in connection with conflicts over land rights, in the name of development, and in many instances associated with violence. The treaty body and special procedures mechanisms took action on communications that deal with the housing rights of indigenous peoples. The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living proposed a set of draft guidelines on forced evictions in his annual report (see E/CN.4/2006/41) that makes reference to indigenous peoples.

8. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, jointly with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, took action on the housing rights of indigenous peoples. An urgent appeal was sent to the Government of Botswana regarding the situation of the Basarwa people living in the Central Kalahari Game Reserve who had been relocated from their traditional homes and hunting ground reserve. Two urgent appeals were sent to the Government of

Brazil concerning the eviction of a number of families from the Guarani-Kaiowa community living on the Cerro Marangatú territory, in the state of Mato Grosso do Sul, and the ongoing evictions affecting the Guarani indigenous community. An urgent appeal was sent to the Government of Thailand concerning the situation of the Hmong people from the Lao People's Democratic Republic. Further information is contained in documents E/CN.4/2006/78/Add.1 and E/CN.4/2006/41/Add.1.

9. In addition, during his visit to Cambodia from 22 August to 3 September 2005, the Special Rapporteur on adequate housing met some indigenous leaders and looked into the housing situation of the indigenous Kuoy community. He noted in his report (E/CN.4/2006/41/Add.3) that, pending legislation or unclear legal provisions concerning the differences between private and State property, transactions involving public property, land concessions and collective property of indigenous lands, for example, result in a situation of uncertainty that negatively affects the right to adequate housing.

III. Women and adequate housing

10. In his final report on women and adequate housing (E/CN.4/2006/118), the Special Rapporteur on adequate housing reiterated that special attention is required for some groups of women, including victims of eviction and indigenous and tribal women, who may be particularly vulnerable to discrimination and are suffering from the consequences of inadequate housing and living conditions. The Special Rapporteur also highlighted the issue of discrimination in housing with respect to indigenous peoples and the need for a general comment on discrimination in housing before the Committee on the Elimination of Racial Discrimination at its sixty-fifth session, in 2005.

IV. Human rights mechanisms

11. Issues of concern relating to the rights of indigenous peoples were raised by other special procedures, including the Special Rapporteur on the right to education, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on violence against women and the Representative of the Secretary-General on the human rights of internally displaced persons. Full information is contained in the report of the High Commissioner to the Commission on Human Rights at its sixty-second session (E/CN.4/2006/77).

12. It should also be noted that several treaty body mechanisms continue to attend to the situation of human rights of indigenous peoples. Several recommendations were made in the concluding observations to State parties' reports and a number of general comments or decisions were adopted that are relevant to indigenous peoples. Full information can be found on the OHCHR website (http://www.ohchr.org).

13. The present report indicates below key contributions by the above-mentioned bodies in addressing violations of the rights of indigenous peoples.

14. **The right to free and prior informed consent**. In its decision of August 2005, the Committee on the Elimination of Racial Discrimination referred to the revised version of the draft Mining Act adopted by the Government of Suriname at

the end of 2004. The Committee expressed deep concern about allegations that resource exploitation and associated infrastructure projects that pose substantial threats of irreparable harm to indigenous peoples were still authorized without any formal notification to the affected communities and without seeking their prior agreement or informed consent. The Committee urged the State to ensure legal acknowledgement of the rights of indigenous peoples to possess, develop, control and use their communal lands and to participate in the exploitation, management and conservation of the associated natural resources.

15. **Customary titles and right of redress**. Under its early warning and urgent action procedure, the Committee on the Elimination of Racial Discrimination reviewed the impact of the New Zealand Foreshore and Seabed Act of 2004 on the rights of the Maori people. The Committee adopted a decision noting the discriminatory aspect of the legislation against the Maori, in particular in its extinguishment of the possibility of establishing Maori customary titles over the foreshore and seabed and its failure to provide a guaranteed right of redress.

16. **Administration of justice**: the Committee also adopted general recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system. The recommendation called upon the State inter alia to ensure respect for and recognition of the traditional systems of justice of indigenous peoples, in conformity with international human rights law; and to take into account, prior to trial, the cultural or customary background of indigenous peoples and to give preference to alternatives to imprisonment and to other forms of punishment that are better adapted to their legal system.

17. **Right to resettlement**: in August 2005, the Committee took action regarding the situation of the Crimean Tatars in Ukraine and recommended that the State take all necessary steps to fully restore the rights of repatriated members of minorities, including the Crimean Tatars, and to afford them just and adequate reparation where appropriate.

18. **Treaty rights, lands and resources**: the Committee also considered the situation of the Western Shoshone people and the status of 1863 Treaty of Ruby Valley in a communication of August 2005. In particular, the Committee raised concerns with regard to plans for the expansion of mining and nuclear waste storage on ancestral lands of the Western Shoshone, the access to judicial process to assert their title to land and other rights related to its use and occupation and the effective participation by indigenous communities in decisions affecting them.

19. **Indigenous children**: in cooperation with the Committee on the Rights of the Child, OHCHR convened a meeting on 31 January 2006 to brief indigenous representatives participating in the Working Group on the draft Declaration on the Rights of Indigenous Peoples on the intention of the Committee to develop a general comment on indigenous children. Some 20 indigenous representatives and four members of the Committee on the Rights of the Child were present and discussed the current draft version of the general comment. The Committee proposed to invite indigenous delegates to provide inputs during a three-day meeting, tentatively foreseen to take place in conjunction with the next session of the Working Group on Indigenous Populations in July 2006. The objective is to seek maximum consultation directly with indigenous representatives and, hopefully, also with indigenous children.

V. Militarization of indigenous peoples' lands

20. The issue of the militarization of indigenous peoples' lands was raised by indigenous representatives at the session of the Working Group on Indigenous Populations held from 18 to 22 July 2005. The Working Group decided that the main theme of its next session in 2006 would be "Utilization of indigenous peoples' lands by non-indigenous authorities, groups or individuals for military purposes".

VI. Permanent sovereignty of indigenous peoples over natural resources and their relationship to lands

21. In its decision 2005/289, the Economic and Social Council endorsed the recommendation of the Commission on Human Rights to authorize OHCHR to convene an expert seminar to give further attention to and to discuss in detail the many political, legal, economic, social and cultural aspects relating to the study on indigenous peoples' permanent sovereignty over natural resources as well as to the study on indigenous peoples and their relationship to lands prepared by the Special Rapporteur of the Subcommission on the Promotion and Protection of Human Rights. OHCHR organized the seminar in Geneva from 25 to 27 January 2006 with the participation of 11 indigenous experts, 2 non-indigenous experts, 24 governmental representatives and 28 non-governmental organizations.

22. The seminar addressed two recommendations to the Forum, namely to consider devoting its sixth session to the question of lands, territories and resources of indigenous peoples, taking into account the results of the present seminar and previous relevant United Nations seminars and studies, and to further strengthen capacity-building and awareness-raising programmes and activities, including at the national and regional levels, in cooperation with indigenous peoples. Such activities should be available to United Nations staff, indigenous peoples, indigenous and non-indigenous civil servants, judicial officials, members of Parliaments and other elected Government officials for the purpose of information exchange, technical assistance and training to contribute to the full realization of the right of indigenous peoples to lands, territories and resources. The conclusions and recommendations of the seminar are contained in an annex to the present report.

VII. Culturally appropriate education

23. In this respect, it should be noted that the main report of the Special Rapporteur presented to the Commission on Human Rights at its sixty-first session (E/CN.4/2005/88) focused on the obstacles indigenous peoples find in the full enjoyment of their right to education. In addition, in his report to the General Assembly (A/60/358), the Special Rapporteur also urged that culturally appropriate indigenous education be given the priority it deserves, both nationally, in public programmes and budgets, and internationally, by international agencies responsible for promoting development and reducing poverty, such as the World Bank and the United Nations Development Programme.

Notes

[1] *Official Records of the Economic and Social Council, 2005, Supplement No. 23* (E/2005/43).

Annex

Expert seminar on indigenous peoples' permanent sovereignty over natural resources and on their relationship to land

(Geneva, 25-27 January 2006)

Conclusions and recommendations

1. Experts at the seminar on indigenous peoples' permanent sovereignty over natural resources and on their relationship to land, held in Geneva from 25 to 27 January 2006, noting that indigenous peoples continue to be denied access to justice and equality before the law in matters relating to their lands, territories and natural resources, and noting also that indigenous peoples' land and resource rights are not well understood, recognized or implemented in many States, agreed on the conclusions and recommendations set out below.

Conclusions

2. Experts conclude that indigenous peoples have the right to permanent sovereignty over their lands, territories and natural resources, especially those which they have traditionally used or occupied.

3. Experts affirm that this right is inherent and inalienable, and is essential for the exercise of the right of self-determination of indigenous peoples. This right is affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples, in international law and the decisions and recommendations of international and regional human rights bodies.

4. Experts note that the right to lands, territories and permanent sovereignty over natural resources encompasses cultural, spiritual, political, economic, environmental and social elements which are essential for the existence and survival of indigenous peoples and require recognition of indigenous peoples' own understandings of their traditional relationship to their lands, territories and natural resources, and their own definitions of development.

5. Experts affirm that recognition and implementation of this right would contribute to the achievement of the United Nations Millennium Declaration and the Millennium Development Goals, alleviation of poverty, sustainable development and improvement of the well-being of indigenous peoples consistent with the 2005 Declaration of Heads of State and the objectives and programme of the second International Decade on the World's Indigenous Peoples.

6. Experts underscore the importance of the draft United Nations Declaration on the Rights of Indigenous Peoples as a contribution towards the full recognition of these rights by States and also recognize that the development of international law in relation to indigenous peoples, including in relation to their permanent sovereignty over their lands and natural resources, is an ongoing process that will continue after the adoption of the Declaration by the General Assembly.

Recommendations

7. Experts endorse the conclusions and recommendations contained in the final reports of the Special Rapporteur on indigenous peoples and their relationship to their lands and indigenous peoples' permanent sovereignty over natural resources (see E/CN.4/Sub.2/2004/30 and E/CN.4/Sub.2/2001/21).

8. Experts call upon States to address inconsistencies in their national laws, ensuring that laws recognizing indigenous peoples' rights over their lands and resources are not overridden or extinguished by other legislation, in particular in relation to extractive industries, natural resource use and the creation of "protected areas". Experts also call upon States to ensure that their national laws and policies relating to indigenous peoples' right to land and natural resources are not discriminatory or inconsistent with international human rights laws and standards.

9. Experts recommend that States initiate and strengthen constitutional, legislative and administrative reforms or amendments that recognize and protect indigenous peoples' rights to their lands, territories and natural resources. Experts also recommend that States establish just and fair administrative and judicial measures to ensure the full implementation of those rights, consistent with international human rights law and indigenous peoples' laws and traditions, and with their full participation.

10. Experts invite States to review their legal and judicial systems to ensure that indigenous peoples are not discriminated against in asserting, claiming and enjoying their rights to their lands, territories and resources, and in treaty negotiation processes.

11. Experts encourage States to recognize the vital importance of implementing national legislation and procedures that protect the rights of indigenous peoples to free, prior and informed consent as the basis and framework for development. States are also called upon to establish, in consultation with indigenous peoples and taking into account their legal systems and decision-making processes, effective measures to ensure that this fundamental right is respected, including by third parties, such as private industry.

12. Experts call upon States to comply with their legal obligations under treaties, agreements and other constructive arrangements concluded between indigenous peoples and modern States or their predecessors and to implement the decisions and recommendations of international human rights bodies and special rapporteurs recognizing and upholding indigenous peoples' rights to their lands and resources.

13. Experts encourage States to ensure that international obligations under free trade agreements, international financial agreements or multilateral agreements are not used to deny indigenous peoples their human rights, treaty rights, land rights or their right of permanent sovereignty over their natural resources.

14. Experts encourage States and the international community to establish an appropriate international mechanism to assist States and indigenous peoples in the implementation of the right of indigenous peoples to their lands, territories and resources, including demarcation, legal recognition, dispute resolution and financial support.

15. Experts invite the new Human Rights Council to establish an effective and inclusive mechanism to ensure access for indigenous peoples to continue to address their concerns over their lands, territories and natural resource rights as well as other human rights.

16. Experts invite the Permanent Forum on Indigenous Issues to consider devoting its sixth session to the question of lands, territories and resources of indigenous peoples, taking into account the results of the present seminar, previous relevant United Nations seminars and studies.

17. Experts invite the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Permanent Forum and other relevant United Nations organizations and specialized agencies to further strengthen capacity-building and awareness-raising programmes and activities, including nationally and regionally, in cooperation with indigenous peoples. The activities should be available to United Nations staff, indigenous peoples, indigenous and non-indigenous civil servants, judicial officials, members of Parliaments and other elected Government officials for the purpose of information exchange, technical assistance and training to contribute to the full realization of indigenous peoples' right to lands, territories and resources.

18. Experts also invite OHCHR to undertake a study and hold a follow-up United Nations seminar, in cooperation with the special rapporteurs on indigenous peoples and transnational corporations, and drawing upon previous relevant seminars and studies, to assess the role of transnational corporations and international financial institutions in relation to indigenous peoples' rights to lands, territories and resources.

19. Experts request that the present report be submitted to the Working Group on Indigenous Populations at its twenty-fourth session for its consideration, including in preparation of relevant working papers, and that it be publicized and given the widest possible dissemination. Experts also request that the Working Group on Indigenous Populations complete its work on the legal commentary on free, prior and informed consent at its twenty-fourth session.

20. Experts encourage the Working Group on the United Nations Draft Declaration on the Rights of Indigenous Peoples to take into account the outcomes of the present seminar when considering the provisions on land, territories and resources in the draft declaration.